Star Dynamics, Inc. and American Flint Glass Workers Union, Local 8, AFL-CIO. Case 6-CA-26572

November 25, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

Upon a charge filed by the Union on July 26, 1994, the General Counsel of the National Labor Relations Board issued a complaint on September 20, 1994, against Star Dynamics, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 25, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On October 27, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 6, 1994, notified the Respondent that unless an answer were received on the third business day following receipt of the letter, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Washington, Pennsylvania, has been engaged in the manufacture and nonretail sale of hydraulic equipment. During the 12-month period ending June 30, 1994, the Respondent sold and shipped from its Washington, Pennsylvania

facility goods valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Union has been designated and recognized as the exclusive collective-bargaining representative of certain employees of the Respondent (the unit). Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period August 1, 1993, to October 1, 1995.

The unit, as set forth in the collective-bargaining agreement described above, constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. At all material times, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive collective-bargaining representative of the unit.

Article 25 of the collective-bargaining agreement provides for respondent contributions to the unit employees' 401(k) plan. Since about January 26, 1994, the Respondent has failed to continue in effect all the terms and conditions of the agreement by failing to make contributions to the unit employees' 401(k) plan. Although the terms and conditions of employment described above are mandatory subjects for the purposes of collective bargaining, the Respondent engaged in this conduct without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since January 26, 1994, to make contractually required payments to the unit employees' 401(k) plan, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts

applicable to such delinquent payments as determined in accordance with the criteria set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d. 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in Ogle Protection Service, 183 NLRB 682 (1970), enfd. 444 F2d. 502 (6th Cir. 1971), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Star Dynamics, Inc., Washington, Pennsylvania, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain collectively and in good faith with American Flint Glass Workers Union, Local 8, AFL-CIO as the exclusive collectivebargaining representative of the unit employees, by failing and refusing to make contributions to the unit employees' 401(k) plan as required by the 1993-1995 collective-bargaining agreement.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Comply with the terms of the 1993-1995 collective-bargaining agreement with the Union by making all required 401(k) plan contributions that have not been made, and make whole its unit employees for any loss of benefits or expenses resulting from its failure to make such contributions since January 26, 1994, with interest, as set forth in the remedy section of this decision.
- (b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (c) Post at facility in Washington, Pennsylvania, copies of the attached notice marked "Appendix."1 Copies of the notice, on forms provided by the Re-

gional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 25, 1994

| William B. Gould IV, | Chairman |
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| James M. Stephens, | Member |
| Margaret A. Browning, | Member |

(SEAL)

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with American Flint Glass Workers Union, Local 8, AFL-CIO as the exclusive collectivebargaining representative of the unit employees, by failing and refusing to make contributions to the unit employees' 401(k) plan as required by the 1993-1995 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the terms of the 1993–1995 collective-bargaining agreement with the Union by making all required 401(k) fund contributions that have not been made, and WE WILL make whole our unit employees for any loss of benefits or expenses resulting from our failure to make such contributions since January 26, 1994, with interest.

STAR DYNAMICS, INC.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."